

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 28, 2009, at 6:00 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Robert Bartholomew  
Ray Dwyer  
Tom Day  
Nancy Bonniwell  
Rob Schuett

**BOARD MEMBERS ABSENT:** Walter Schmidt

**SECRETARY TO THE BOARD:** Peggy S. Tilley

**OTHERS PRESENT:** Town of Merton Board of Adjustment Members  
Atty. Debbie Price, Corporation Counsel  
Atty. Robyn Schuchardt, Corporation Counsel  
Richard L. Mace, Planning and Zoning Division Manager  
Mary E. Finet, Planning and Zoning Division Staff Member  
Jeff Radi, BA08:077, owner  
Dan Fairbanks, BA08:077, neighbor  
Jeff Bertelson, BA09:001, owner  
Nick Dakouras, BA09:001, agent  
Martin and Carol Leonard, BA08:052, owners  
Lawrence Babb, BA08:052, architect  
Atty. Hector de la Mora, BA08:052, representing Mr. and  
Mrs. Leonard  
Rodney Johnson, BA07:056, representing Vernon Lutheran  
Church

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Day *I make a motion to approve the Summary of the Meeting of December 10, 2008, subject to the staff reviewing and making any necessary corrections to the minutes relating to Staff's recommended Condition No. 3 of BA08:071.*

The motion was seconded by Mr. Dwyer and carried with three yes votes. Mr. Schuett and Ms. Bonniwell abstained.

**NEW BUSINESS:**

**INTRODUCTION OF NEW BOARD MEMBER, NANCY BONNIWELL**

Richard Mace, Planning and Zoning Division Manager, introduced the new Board of Adjustment member, Nancy Bonniwell.

**CLOSED SESSION:**

Mr. Bartholomew

*I make a motion to Motion to convene in closed session pursuant to Section 19.85(1)(g), Wisconsin Statutes, to confer with legal counsel from the Waukesha County Corporation Counsel's Office who is rendering oral or written legal advice concerning strategy to be adopted by the Waukesha County Board of Adjustment with respect to litigation in which it is involved, specifically concerning the following cases:*

- *Peter and Darcy McCormick vs. Waukesha County Board of Adjustment, Case Numbers 07-CV-1542 and 08-CV-1145,*
- *Dennis and Tori Becker vs. Waukesha County Board of Adjustment, Case Number 08-CV-1749,*
- *State of Wisconsin vs. Waukesha County Board of Adjustment, Case Number 08-CV-3217,*
- *Donald and Susanne Dysland vs. Waukesha County Board of Adjustment, Case Number 08-CV-3387,*
- *IH Waukesha LLC & Joseph Igl and Sharon Igl vs. Waukesha County Board of Adjustment, Case Number 08-CV-1036,*
- *State Ex Rel Fred Storm and Patricia Storm vs. Waukesha County Board of Adjustment and the Town of Merton Board of Adjustment, Case Number 08-CV-3425,*
- *ANR Pipeline Company vs. Waukesha County Board of Adjustment, Case Number 08-CV-3061,*
- *United States Cellular Operating Company LLC vs. Waukesha County Board of Adjustment, Case Number 08-CV-3324.*

The motion was seconded by Mr. Day and carried unanimously.

A roll call vote was taken.

Rob Schuett: Aye.

Nancy Bonniwell: Aye.

Tom Day: Aye.

Ray Dwyer: Aye.

Bob Bartholomew: Aye.

Mr. Dwyer *I make a motion to reconvene in open session.*

The motion was seconded by Mr. Day and carried unanimously.

### **REVIEW OF BOARD OF ADJUSTMENT RULES OF PROCEDURE AND DISCUSSION OF FUTURE MEETING SCHEDULES**

Discussion regarding procedures of election of Board of Adjustment Officers, proposed future changes to the Board of Adjustment Rules of Procedure, and proposed future Board of Adjustment Meeting Schedules. No action was taken on these matters.

### **BA08:077 JEFF AND KATIE RADI:**

Mr. Dwyer *I make a motion to **deny** the request. The petitioner indicated that he would like to sell the portion of his property to the adjacent property to the north for financial gain. Since hardships should not be financial or economic in nature, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. Furthermore, there are other options that the applicant may explore to achieve a similar goal. Therefore, the approval of this request is not within the purpose and intent of the Ordinance.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the lot width and lot size requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, for the proposed sale of 1,205 sq. feet of land to the adjacent property to the north.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The Planning and Zoning Division staff feels that rather than making the subject property smaller and more non-conforming, the same result could be achieved by swapping the portion of land that the petitioner would like to sell to the neighbor to the north with another piece of the neighbor's land. This would result in no net change to the lot size or lot width and no change to the floor area ratio of the property while still creating the desired situation with easier access to the neighbor's property. A conceptual plan depicting the situation described above is attached as Exhibit "C."

Therefore, since an alternative solution exists that would not require variances, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area,

setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Therefore, the approval of this request would not be within the purpose and intent of the Ordinance.

**BA09:001 JEFF BERTELSON (OWNER), NICK DAKOURAS (AGENT):**

Mr. Day

*I make a motion to **deny** the request for variances from the offset and shore setback requirements of the Ordinance but **approve** the request for variances from the floor area ratio and open space requirements, in accordance with the conditions and reasons stated in the Staff's recommendation, with the following modifications:*

*Condition No. 1 shall be modified to read as follows: The two existing 45 sq. ft. sheds and the 250 sq. ft. garage, shall be removed from the property prior to the issuance of a Zoning Permit for the proposed residence.*

*Condition No. 2 shall be modified to read as follows: The total floor area ratio on the property shall not exceed 22.0% including any covered decks, patios, porches, etc. The first floor of the residence must be at least 850 sq. ft. in size and the footprint of the proposed residence shall not exceed 1,225 sq. ft.*

*The reasons stated in the staff report shall be modified in accordance with the above modifications to the conditions.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the offset and shore setback requirements of the Ordinance but **approval** of the request for variances from the floor area ratio and open space requirements, subject to the following conditions:

The reasons for the recommendation, as stated in the Staff Report, are as follows:

1. The two existing 45 sq. ft. sheds, the 250 sq. ft. garage, and the existing shed near the lake shall be removed from the property prior to the issuance of a Zoning Permit for the proposed residence.
2. The total floor area ratio on the property shall not exceed 19.5% (approximately 2,640 sq. ft.) including any covered decks, patios, porches, etc. The first floor of the residence must be at least 850 sq. ft. in size. If the petitioner intends to keep the existing 795 sq. ft. detached garage, then the footprint of the proposed residence shall not exceed 1,000 sq. ft. If the petitioner intends to remove all of the structures from the property and construct a new

residence with an attached garage, the footprint of the new residence and attached garage shall not exceed 1,600 sq. ft. with the first floor being a minimum of 850 sq. ft. and the attached garage being a minimum of 400 sq. ft.

3. The proposed residence must conform to all required offsets and setbacks and must be located at least 10 ft. from the side lot lines and 75 ft. from the shore and floodplain unless averaging allows for a lesser shore and floodplain setback. Offsets and setbacks shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
4. No decks, patios, or retaining walls are proposed herein. Any future proposed decks, patios or retaining walls must comply with all applicable Ordinance requirements or additional variances must be applied for.
5. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
6. Prior to the issuance of a Zoning Permit, a soil boring down to the proposed crawl space elevation must be completed and the soil test results must be provided to Planning and Zoning Division staff to determine compliance with Section 3(d)(10) of the Waukesha County Shoreland and Floodland Protection Ordinance.
7. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed residence, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The plat of survey must show the Ordinary High Water Mark of Okauchee Lake as established by the Wisconsin Department of Natural Resources, the 100-year floodplain, and a lot size of the property. The shore and floodplain setback of the new residence must be identified to the closest point of the shore or floodplain to the residence, it should be noted that this point may be located on an adjacent property.
9. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the

source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 8.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

A new residence could be constructed that will comply with the offset and shore setback requirements of the Ordinance. At the narrowest area of the building envelope, the residence may be no more than approximately 25 ft. wide, it should be noted that this is wider than the existing residence at said point. The lot then widens towards the road where the width of the residence could be enlarged. The proposed residence may or may not need a shore setback variance. The location of the residence could be modified slightly, if necessary, to comply with the shore setback requirements of the Ordinance. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The property itself does not meet the open space requirements of the Ordinance. Therefore, some relief is necessary from the open space requirements of the Ordinance to allow the construction of a new residence.

Variances should be granted only to provide the minimum relief necessary for a property owner to be able to use the property for a permitted purpose. As recommended, the property will have approximately 2,640 sq. ft. of floor area. Although this is less than is currently existing on the property, the current floor area on the property greatly exceeds that which is appropriate for the neighborhood and the lot size. This is the opportunity to bring the property further into compliance while still allowing the petitioner to use the property for a permitted purpose. The petitioner may consider removing the 795 sq. ft. detached garage and constructing a smaller attached garage instead, to allow for additional square footage in the proposed residence.

The approval of this request, as conditioned, will eliminate several non-conforming structures from the property and will allow the construction of a new residence that will be appropriately sized for the lot and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the recommended conditional approval is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

**BA08:052 MARTIN AND CAROL LEONARD:**

*Reference Staff Memorandum of January 28<sup>th</sup> and the Board's concluding that no new evidence was presented.*

*A motion for reconsideration was not made. Therefore, the Board of Adjustment did not reconsider their decision of August 27, 2008.*

The Planning and Zoning Division staff recommended that this matter **not be reconsidered**. The Planning and Zoning Division staff recommended that if the Board chose to open this matter up for reconsideration, the Board should uphold its previous decision of **denial** of the request for variances from the road setback and offset requirements of the Ordinance but **approval** of the request for variances from the floor area ratio and open space requirements and **approval** of the request for a special exception from the minimum floor area requirements of the Ordinance, with the conditions imposed and for the reasons as stated in the Decision Sheet dated September 11, 2008.

**BA07:056 VERNON LUTHERAN CHURCH:**

Mr. Day *I make a motion to reconsider our decision of August 22, 2007, and consider the request to revise Condition No. 3 of the approval placed on a variance from the sign size requirement that was granted to permit replacement of an existing church sign.*

The motion was seconded by Mr. Bartholomew carried with three yes votes. Mr. Day, Mr. Bartholomew, and Mr. Schuett voted yes. Mr. Dwyer and Ms. Bonniwell voted no.

Mr. Day *I make a motion to approve the request to modify Condition No. 3 and allow the brick and concrete monument sign to remain, in accordance with the staff's recommendation, with Condition No. 3 modified to read as recommended in the Staff Memorandum, for the reasons stated in the Staff Memorandum and based upon the information presented.*

*Additional reasons for approval are as follows:*

*The brick and concrete monument sign has existed since the original portion of the church was built under a Conditional Use Permit and even if the sign was not specifically mentioned, it was part of the Conditional Use Permit.*

*The brick and concrete monument sign is not contrary to the public interest and considering that this is a residential neighborhood, the applicant indicated there is no longer lighting on that sign structure.*

*The brick and concrete monument sign is appealing and it is*

*surrounded by some nice landscaped trees, which makes it a nice focal point.*

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request to modify Condition No. 3 of the variance granted on August 22, 2007, from the sign size requirement of the Waukesha County Zoning Code, to permit an existing monument sign for the church to be replaced with a larger monument sign, with Condition No. 3 modified to read as follows:

“The 5 ft. x 5 ft. metal and glass church sign must be removed within thirty (30) days of the installation of the new sign, but the 10 ft. x 4 ft. brick and concrete monument sign displaying the name of the church may remain, provided it is not illuminated.”

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The approval of the requested modification to Condition No. 3 to permit the brick and concrete monument sign, which was installed when the church was constructed and has sentimental value to many of the church members, to remain, is not contrary to the public interest. The brick and concrete monument sign is non-obtrusive and in a conforming location and allowing it to remain will not be a safety hazard. Therefore, the approval of the request to modify Condition No. 3 of the sign size variance granted on August 22, 2007, to permit the brick and concrete monument sign to remain, is in conformance with the purpose and intent of the Ordinance.

## **ADJOURNMENT:**

Mr. Day *I make a motion to adjourn this meeting at 10:06 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Peggy S. Tilley  
Secretary, Board of Adjustment